

AMENDED IN SENATE APRIL 21, 1998

AMENDED IN SENATE MARCH 31, 1998

AMENDED IN SENATE MARCH 23, 1998

SENATE BILL

No. 1696

Introduced by Senator Alpert

February 17, 1998

~~An act to amend Sections 25658 and 25658.1 of~~ *An act to amend Section 25658 of, to add Section 25658.3 to, and to add and repeal Section 25658.2 of,* the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1696, as amended, Alpert. Alcoholic beverages.

The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years, and imposes penalties in that regard, but permits minors to be used as decoys in the enforcement of these provisions.

This bill would require that, after the completion of each minor decoy program, the law enforcement agency using the decoy notify licensees of the results of the program.

The bill would, *until January 1, 2004*, permit a licensee to avoid the effect of a penalty for selling alcoholic beverages to a minor if the licensee takes specified steps to prevent the sale of alcoholic beverages to a minor.

The bill would state findings and declarations by the Legislature and state the intent of the Legislature in

providing for the methods of enforcement of the prohibited sales of alcoholic beverages to minors.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as the “Licensee Education and Training Act of 1998.”

3 SEC. 2. Section 25658 of the Business and Professions
4 Code is amended to read:

5 25658. (a) Every person who sells, furnishes, gives, or
6 causes to be sold, furnished, or given away, any alcoholic
7 beverage to any person under the age of 21 years is guilty
8 of a misdemeanor.

9 (b) Any person under the age of 21 years who
10 purchases any alcoholic beverage, or any person under
11 the age of 21 years who consumes any alcoholic beverage
12 in any on-sale premises, is guilty of a misdemeanor.

13 (c) Any on-sale licensee who knowingly permits a
14 person under the age of 21 years to consume any alcoholic
15 beverage in the on-sale premises, whether or not the
16 licensee has knowledge that the person is under the age
17 of 21 years, is guilty of a misdemeanor.

18 (d) (1) Except as otherwise provided in paragraph
19 (2), any person who violates this section shall be punished
20 by a fine of two hundred fifty dollars (\$250), no part of
21 which shall be suspended, or the person shall be required
22 to perform not less than 24 hours or more than 32 hours
23 of community service during hours when the person is
24 not employed and is not attending school, or a
25 combination of fine and community service as
26 determined by the court.

27 (2) Any person who violates subdivision (a) by
28 furnishing an alcoholic beverage, or causing an alcoholic
29 beverage to be furnished, to a minor shall be punished by
30 a fine of one thousand dollars (\$1,000), no part of which
31 shall be suspended, and the person shall be required to
32 perform not less than 24 hours of community service



1 during hours when the person is not employed and is not
2 attending school.

3 (e) Persons under the age of 21 years may be used by
4 peace officers in the enforcement of this section to
5 apprehend licensees, or employees or agents of licensees,
6 who sell alcoholic beverages to minors. Notwithstanding
7 subdivision (b), any person under the age of 21 years who
8 purchases or attempts to purchase any alcoholic beverage
9 while under the direction of a peace officer is immune
10 from prosecution for that purchase or attempt to
11 purchase an alcoholic beverage. Guidelines with respect
12 to the use of persons under the age of 21 years as decoys
13 shall be adopted and published by the department in
14 accordance with the rulemaking portion of the
15 Administrative Procedure Act (Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3
17 of Title 2 of the Government Code). Law
18 enforcement-initiated minor decoy programs in
19 operation prior to the effective date of regulatory
20 guidelines adopted by the department shall be
21 authorized as long as the minor decoy displays to the
22 seller of alcoholic beverages the appearance of a person
23 under the age of 21 years. This subdivision shall not be
24 construed to prevent the department from taking
25 disciplinary action against a licensee who sells alcoholic
26 beverages to a minor decoy prior to the department's
27 final adoption of regulatory guidelines. After the
28 completion of every minor decoy program performed
29 under this subdivision, the law enforcement agency using
30 the decoy shall notify licensees of the results of the
31 program.

32 (f) It is the intention of the Legislature in enacting this
33 chapter that while permitting law enforcement to use
34 underage decoys, this should not be the exclusive
35 enforcement program and that equal emphasis and
36 resources should be put on apprehending and
37 prosecuting underage minors who attempt to purchase
38 alcohol. To that end, the Director of Alcoholic Beverage
39 Control shall require that all local law enforcement grants
40 include equal components of underage decoys and

1 undercover law enforcement stings, such as
2 “Cops-In-Shop”, targeted at underage minors who
3 attempt to purchase alcohol. To qualify for a local grant,
4 a local jurisdiction must also demonstrate a record of
5 enforcing and prosecuting violations of liquor laws
6 against both minors and adults.

7 ~~SEC. 3. Section 25658.1 of the Business and~~
8 ~~Professions Code is amended to read:~~

9 ~~25658.1. (a) Notwithstanding any other provision of~~
10 ~~this division, no licensee may petition the department for~~
11 ~~an offer in compromise pursuant to Section 23095 for a~~
12 ~~second or any subsequent violation of Section 25658 that~~
13 ~~occurs within 36 months of the initial violation.~~

14 ~~(b) Notwithstanding Section 24200, the department~~
15 ~~may revoke a license for a third violation of Section 25658~~
16 ~~that occurs within any 36-month period. This provision~~
17 ~~shall not be construed to limit the department’s authority~~
18 ~~and discretion to revoke a license prior to a third violation~~
19 ~~when the circumstances warrant that penalty.~~

20 ~~(c) A licensee may, for purposes of the penalties~~
21 ~~described in subdivisions (a) and (b), eliminate the effect~~
22 ~~of a sale of an alcoholic beverage to a minor, if the licensee~~
23 ~~does all of the following activities to prevent the sale of~~
24 ~~alcoholic beverages to a minor:~~

25 ~~(1) Trains all employees who may sell or serve~~
26 ~~alcoholic beverages at the licensed premises in a clerk or~~
27 ~~server training program approved by the department.~~

28 ~~(2) Installs electronic equipment to scan or read~~
29 ~~California drivers’ licenses or official identification cards~~
30 ~~to determine the date of birth of the customer and~~
31 ~~whether the customer is a minor, and implement~~
32 ~~employee training and policies to utilize the equipment~~
33 ~~to check the identification of any alcoholic beverage~~
34 ~~customer who appears to be under 30 years of age.~~

35 ~~(3) Implements a procedure to periodically test~~
36 ~~employees of the premises by using persons posing as~~
37 ~~customers who are over the age of 21 years old but under~~
38 ~~the age of 25 years old to purchase alcoholic beverages in~~
39 ~~order to determine if clerks or servers are properly~~
40 ~~checking identification.~~

~~(d) The department shall allow a licensee to avoid the effect, for penalty purposes, of one sale to a minor, if the licensee satisfies these requirements at the licensed premises where a violation occurred within 90 days of a final determination that the licensee has violated subdivision (a) of Section 25658, or a longer time that the department finds reasonable under the circumstances. Within a 36-month period, a licensee shall be able to avoid the effect of any penalty for one sale to a minor that has not become final as of the effective date of the act adding this subdivision. Any penalty that has not become final as of that date, shall be stayed to allow the licensee to satisfy the above requirements within 90 days of that date or a longer time that the department finds reasonable under the circumstances.~~

~~(e) The Legislature finds and declares as follows:~~

~~(1) That the intent of subdivision (c) of Section 25658, permitting law enforcement to use underage decoys, and this section, imposing mandatory suspension for a second sale to a minor within 36 months, is to motivate alcoholic beverage licensees to implement procedures that effectively prevent sales of alcoholic beverages to minors.~~

~~(2) That certain policies, procedures, and equipment have been demonstrated to be effective in preventing sales to minors, and that licensees should be motivated to implement these policies and procedures and use the equipment.~~

SEC. 3. Section 25658.2 is added to the Business and Professions Code, to read:

25658.2. (a) Notwithstanding Section 25658.1, a licensee may petition for a one-year stay of the first order suspending, but not revoking, a license following the effective date of this section. The department may grant the petition staying the suspension if the licensee does all of the following activities to prevent the sale of alcoholic beverages to a minor:

(1) Trains all employees who may sell or serve alcoholic beverages at the licensed premises in a clerk or server training program approved by the department.

1 (2) Installs electronic equipment to scan or read
2 California driver's licenses or official identification cards,
3 to determine the date of birth of the customer and
4 whether the customer is a minor, and implement
5 employee training and policies to utilize the equipment
6 to check the identification of any alcoholic beverage
7 customer who appears to be under 30 years of age.

8 (3) Implements a procedure to periodically test
9 employees of the premises by using persons posing as
10 customers who are over the age of 21 years old but under
11 the age of 25 years old to purchase alcoholic beverages in
12 order to determine if clerks or servers are properly
13 checking identification.

14 (b) Any stay of a suspension granted pursuant to
15 subdivision (a) of this section shall become permanent
16 after one year and shall not be considered for purposes of
17 imposing a penalty under Section 25658.1 of any
18 subsequent violation that may occur more than one year
19 after the effective date of the order granting the petition
20 for the stay.

21 (c) If any subsequent determination is made after
22 hearing or upon stipulation and waiver that a violation of
23 Section 25658 occurred within one year from the effective
24 date of the order granting the petition for the stay, the
25 department shall vacate the stay and the violation shall be
26 considered for purposes of imposing a penalty under
27 Section 25658.1. In the event an accusation alleging a
28 violation of Section 25658 has occurred within one year
29 from the effective date of the order granting the petition
30 for the stay pursuant to subdivision (a) is filed against a
31 licensee, the stay shall be extended until such time as that
32 accusation is final, and the department shall retain
33 jurisdiction over the matter until that time.

34 (d) The Legislature finds and declares as follows:

35 (1) That the intent of subdivision (e) of Section 25658,
36 permitting law enforcement to use underage decoys, and
37 this section, imposing mandatory suspension for a second
38 sale to a minor within 36 months, is to motivate alcoholic
39 beverage licensees to implement procedures that
40 effectively prevent sales of alcoholic beverages to minors.

1 (2) That certain policies, procedures, and equipment
2 have been demonstrated to be effective in preventing
3 sales to minors, and that licensees should be motivated to
4 implement these policies and procedures and use the
5 equipment.

6 (e) This section shall remain in effect only until
7 January 1, 2004, and as of that date is repealed, unless a
8 later enacted statute, that is enacted before January 1,
9 2004, deletes or extends that date.

10 SEC. 4. Section 25658.3 is added to the Business and
11 Professions Code, to read:

12 25658.3. On or before March 1, 2003, the director shall
13 prepare and submit to the Legislature a report on the
14 number of petitions for a stay of suspension that have
15 been made and approved pursuant to subdivision (a) of
16 Section 25658.2. The director shall also report the number
17 of stays of suspension made permanent pursuant to
18 subdivision (b) of Section 25658.2 and the number which
19 did not become permanent pursuant to subdivision (c) of
20 Section 25658.2.

